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10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF NEVADA**

13
14
15 **IN RE WAL-MART WAGE AND HOUR
EMPLOYMENT PRACTICE LITIGATION**

16 **MDL 1735**

17 THIS DOCUMENT RELATES TO:
18 ALL ACTIONS EXCEPT KING v.
19 WAL-MART STORES, INC., CASE NO.
20 07-1486-WY

21 2:06-CV-00225-PMP-PAL
22 (BASE FILE)

23 **PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR IMPOSITION OF**
24 **SANCTIONS AGAINST OBJECTOR JESSICA LYNN GAONA AND**
25 **HER COUNSELS CHRISTOPHER BANDAS AND LISA RASMUSSEN**

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Other Authorities

Fed. R. Civ. Proc. 11

Pursuant to Rule 11 of the Federal Rules of Civil Procedure (hereafter, "Rule 11") and/or the inherent power of the District Court, Plaintiffs move this Honorable Court to impose sanctions against Objector Jessica Lynn Gaona (hereafter, "Gaona," "Objector" "Objector Gaona" or "Client") and her Counsels Christopher Bandas, Esq. and Lisa Rasmussen, Esq. (hereafter, "Legal Counsels" or "Counsels"). The basis for the request as to Gaona is that she filed an Objection that included material information that was untrue, and that she failed to correct the invalid information or otherwise act as was required under the circumstances. As to legal counsels Bandas and Rasmussen, sanctions are sought because they assisted in and/or placed on file a formal pleading – the Objection – without the required reasonable and competent inquiry and which contained untrue information regarding the client's address; and/or that they, thereafter individually and jointly, failed both to correct the record and to produce their client for deposition before the Final Approval Hearing and the closing of the related record despite actual knowledge of the false and invalid address in the record. Moreover, both Objector Gaona and her counsel completely failed to take a single reasonable remedial step or otherwise act as required under the circumstances.

The actions and failures to act by Objector Gaona and her Counsel have obstructed the orderly administration of justice in this case. Through this date, an invalid address for service for Gaona remains on file with this Court; and the costs related to Objector Gaona's "no show" deposition remain a burden carried by the Class. For these reasons, and as detailed herein, Gaona, Bandas and Rasmussen should be sanctioned for their misconduct and held accountable for the costs that they wrongfully caused the Class to incur.¹

I. FACTS

¹ The fact that the costs are modest argues for their assessment, not against it.

After many years of hard-fought litigation, Defendant Wal-Mart Stores, Inc. and its affiliated companies along with Class Counsels and Putative Class Representatives (hereafter the “Parties”) executed a Settlement Agreement (hereafter, “Settlement”) seeking to finally resolve all disputes between them. The history and context of the instant litigation and its Settlement are well known to this Court. Both the history and the merits of the eventual Settlement have also been the subject of exhaustive briefing and multiple hearings.²

The explicit terms of the Settlement Agreement required that any Class Member who wished to object provide formal notification to the Court and the parties in writing, on or before a clearly identified final date for objections.³ In particular, Section 8.15.3 of the Settlement Agreement expressly required as follows:

8.15.3. The written objection must be made under penalty of perjury and include the following information:

...

² For the sake of brevity, Plaintiffs incorporate by reference the contents of the briefing, hearings and Orders relating to the composition of the complaint, Docket nos. 53, 56, 138, 154, 158, 289, 300-301; class certification, Docket nos. 89-94, 203-220, 231, 248, 249, 323; Preliminary Approval, Docket nos. 302-322; Final Approval, Docket nos. 425-438, 486. Plaintiffs also incorporate by reference the Requests for Bonds as to Objectors Gaona, Maddox, and Andrews filed by Robert Bonsignore and joined by the unified Plaintiffs’ counsels. *See* Docket nos. 540-546, 549-554, 566-573. Plaintiffs also incorporate the responses of the Objectors to *all* requests for bonds. *See* Docket nos. 557, 558, 573, 583.

³ *See* Docket nos. 435-1 through 435-5, Attachments to Declaration of Nicole Vamosi in Support of Final Approval, October 1, 2009. *See also* Docket no. 435, N-4, Summary Notice, to Declaration of Nicole Vamosi in Support of Final Approval, October 2, 2009.

1 8.15.3.2. The Objector's name, address, telephone number, and the contact
2 information for any attorney retained by the Objector in connection with the
3 objection or otherwise in connection with the Litigation.
4

5 The provision requiring Objectors to provide their addresses and contact information, as
6 well as the same information for their counsel, comports with the Federal Rules of Civil
7 Procedure that apply equally to every party in every litigated matter. There is no "Objector" or
8 Professional Objector" exemption.
9

10 On September 24, 2009, Gaona and her counsel, Christopher Bandas, Esq., a self-
11 described Professional Objectors, and Lisa Rasmussen, Esq. objected to the Settlement. *See*
12 Docket no. 387, September 24, 2009. Under the pains and penalties of perjury, Objector Gaona
13 provided and caused to be placed on file her address of residence as 6780 Wayman Ridge, Live
14 Oak, Texas, 78233. Also under the pains and penalties of perjury, she advised that Attorney
15 Christopher Bandas, Bandas Law Firm, 500 N. Shoreline Blvd., Corpus Christi, Texas, 78471;
16 and Lisa Rasmussen, Esq., 616 South 8th Street, Las Vegas, Nevada, 89101, represented her.
17

18 On October 5, 2009, Plaintiffs acted to take the deposition of Objector Gaona. *See*
19 Docket no. 441-2, Notice to Take Deposition of Jessica Lynn Gaona (hereafter, "Deposition
20 Notice"). *See also* Document 447-4, dated October 6, 2009 Court Order, and Docket no. 447-4,
21 amended Notice to Take Deposition of Jessica Lynn Gaona, October 6, 2009. A copy of the
22 Deposition Notice was served upon her counsel Bandas through electronic service on October 5,
23 2009 and October 6, 2009. The Deposition Notice provided Gaona with notice that her
24 deposition was to be taken at 11:00 a.m., October 9th, 2009 at Ak/ret Reporting, 555 N.
25 Carancahua, Suite 880, Corpus Christi, Texas. *Id.* Additionally, the deposition notice also made
26 clear that upon the request of the objector the alternative location of Law Offices of Anthony
27
28

1 Constant⁴, 800 N. Shoreline Blvd., Suite 2700 S., Corpus Christi, Texas, one of her counsels of
2 record was also acceptable. *Id.* Neither Gaona nor her counsel showed up for the deposition and
3 neither responded to the Notice of Deposition.
4

5 An agreement was entered between counsel for Plaintiffs and Attorney Bandas on
6 October 7, 2009 to take the deposition set for October 9, 2009 off-calendar on the condition that
7 if resolution of the objection was not reached she would be made available prior to the Final
8 Approval hearing. This agreement was later breached by the objector and her counsel. *See*
9 Affidavit of Robert Bonsignore in Support of Sanctions against Objector Jessica Lynn Gaona
10 and Her Counsel Christopher Bandas and Lisa Rasmussen at ¶15.
11

12 After the breach of Agreement became evident, Plaintiffs again formally took action to
13 take the depositions of Objector Gaona on October 19, 2009.⁵ *See* Docket no. 471-2, Notice to
14 Take Deposition of Jessica Lynn Gaona, October 19, 2009. A copy of the Deposition Notice
15 was served upon her counsel Bandas through electronic service on October 19, 2009. The
16 Deposition Notice provided Gaona with notice that her deposition was to be taken on October
17 24, 2009, 11:00 a.m., LaQuinta Inn, 1619 N. IH-35, San Marcos, Texas, 78666. *See* Attachment
18 A, Deposition Notice. The Deposition Subpoena was served on her counsel clearly providing
19 her with notice that her deposition was to be taken.
20
21

22 On October 20, 2009, attempted service of the Subpoena to Testify at a Deposition in a
23 Civil Action to Jessica Lynn Gaona (hereafter, "Deposition Subpoena") was made by process
24 server Tim Shultz at the address Gaona provided to the Court in her Objection, 6780 Wayman
25

26 ⁴ It is the understanding of the class that Attorney Anthony Constant has withdrawn for the MDL 1735 related
27 proceedings. If this is not the case we intend to seek sanctions against him. Also if the blame for the false address is
28 pinned on Attorney Constant we seek sanctions.

⁵ It is believed that Gaona did not reside at the address she provided to the Court and Counsels in her sworn
objection. However, this presumed fact is the subject of an anticipated evidentiary hearing and request for sanctions
and is not a part of this bond request.

1 Ridge, Live Oak, Texas, 78233. *See* Attachment B, Declaration of Not Found, Due and Diligent
2 Search by Tim Shultz. *See also* Attachment C, Subpoena to Testify at a Deposition in a Civil
3 Action to Jessica Lynn Gaona; Gaona Objection at 2. Shultz attempted service at Gaona's
4 address twice, once at 9:10 a.m. when there was no response at the door and Shultz left delivery
5 notice. *See* Attachment B, Declaration of Not Found, Due and Diligent Search by Tim Shultz. It
6 is noteworthy that at 8:45 p.m. Process Server Shultz was clearly informed by the property's
7 resident that Gaona did not reside at that address. *Id.* Notwithstanding the fact that through
8 counsel she provided a false address to the Court, Gaona must be deemed for the fourth time as
9 having been provided with notice that Plaintiffs wished to depose her because the Deposition
10 Subpoena which was served on their counsel again provided Gaona with notice that her
11 deposition was to be taken on October 24, 2009, 11:00 a.m., LaQuinta Inn, 1619 N. IH-35, San
12 Marcos, Texas, 78666.

13
14
15 Neither Gaona nor Bandas nor Rasmussen appeared for deposition on October 24, 2009;
16 nor did they contact Plaintiffs' counsel to indicate that Gaona would not appear to be deposed
17 and/or arrange a firm follow-up date. As a result, Plaintiffs' counsel incurred costs relative to the
18 preparation for, travel to, and attendance at the deposition, as well as the costs to notice, serve,
19 and obtain court orders regarding the deposition; and the record in this Litigation closed without
20 Plaintiffs having the opportunity to depose Gaona as to the underlying factual basis for her
21 Objection and the other matters referenced in the Safe Harbor letter.
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26 II. ARGUMENT

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Two facts are critical: first, that every reasonable effort was made to serve Gaona at the address she had provided to Plaintiffs' counsel and the Court under the pains and penalties of perjury; and second, that notice to her Legal Counsels— of both the deposition and the Gaona's submission of a false address is not in dispute. Under these circumstances, there was no justification for Gaona's failure to appear or her Legal Counsels failure to correct the record and/or produce Gaona to be deposed. In fact, they acted in further violation of court rules and an express Court Order.

A. Sanctions Are Appropriate as to Objector Gaona Because She Provided an Incorrect Address to the Court and Failed to Appear for Her Deposition in Violation of an Explicit Court Order.

This Court should find that Objector Gaona provided an incorrect and false address in her Objection, filed with the Court under the pains and penalties of perjury, in violation of the explicit terms of the Settlement Agreement.

Shultz, the process-server, went to the address Gaona provided twice and on his second visit was informed in person by the property's resident that Gaona did not reside at that address. These facts are more than sufficient for the Court to conclude that Gaona committed perjury in her Objection pleading by providing a false address.⁶

An equally compelling reason why this misconduct is sanctionable, however, is is the effect that that false information had on this Litigation, Plaintiffs' counsel, and all the members of the Class who have complied with and abided by all of the rules and requirements throughout the Litigation.

⁶ It should be noted that if Gaona did, in fact, live at that apartment, then she was validly served as Shultz left notice at the residence. Service in any case was accomplished on Gaona's counsel, who had the duty and obligation to inform her of the subpoena and the Court Order that she be deposed, and to apprise her of the consequences of violating a Court Order by failing to appear.

1 Gaona is an Objector, represented by Professional Objector counsels Bandas and
2 Rasmussen. By providing an invalid address for service of process, Gaona (and her Legal
3 Counsels) intentionally deprived Plaintiffs the opportunity to depose her, explore the factual and
4 legal bases for her objection, and create a record for this Court and the Appellate Court prior to
5 the Final Hearing on the Settlement. This willful misconduct obstructed justice by interfering
6 with the orderly administration of this proceeding and has impacted and will continue to impact
7 the Settlement of the Litigation and the ability of the Class Members to obtain their long-awaited
8 recovery.
9

10
11 Plaintiffs acknowledge that the failure to attend a single deposition may not always
12 warrant sanctions. However, in the context of the critical timing and the knowing and willful
13 provision of false information in such a serious setting and the significance of the purpose, use
14 and timing of the deposition of this Objector here, Client and Legal Counsel must be sanctioned.
15 Gaona chose to object rather than to exclude herself from the Settlement – which would have
16 allowed her full freedom to pursue any and all avenues to a full recovery of what she considered
17 herself to be due. By voluntarily injecting herself into this actively litigated case at such a
18 critical juncture as an Objector, whose conduct directly impacts every other member of the Class
19 and all the participants in the Litigation, Gaona also submitted herself to the attendant
20 obligations and at the pace required to allow the orderly administration of justice. In this
21 context, Gaona affirmatively acted to prevent service of process and disregard of a Court Order
22 to be deposed was and is sanctionable misconduct.
23
24

25 B. Sanctions Are Appropriate as to Counsels Bandas and Rasmussen Because They
26 Violated Rule 11 By Submitting a Pleading to the Court Containing False and
27 Unsupported Factual and Legal Assertions and/or Then Failed to Produce Their
28 Client for Deposition Despite Valid Process and an Explicit Court Order and/or Act
to Correct the Record.

1 Counsels Bandas and Rasmussen should be sanctioned because they submitted, assisted in
2 the submission and/or failed to immediately correct a pleading containing a false address for their
3 client and failed to produce their client for deposition despite their having received notice and a
4 Court Order.
5

6 Rule 11 states in pertinent part that:

7 "By presenting to the court...a pleading,...an attorney...is certifying that to the best of the
8 person's knowledge, information, and belief, formed after an inquiry reasonable under the
9 circumstances,.. (3) the factual contentions have evidentiary support or, if specifically so
10 identified, will likely have evidentiary support after a reasonable opportunity for further
11 investigation or discovery"

12 Rule 11.

13 The Supreme Court has held that at the "heart of Rule 11" is the message conveyed by the
14 signer's certification that he "has conducted a reasonable inquiry into the facts and the law and is
15 satisfied that the document is well grounded in both... ." *Business Guides, Inc. v. Chromatic*
16 *Communications Enterprises, Inc.*, 498 U.S. 533, 544 (1991). Subjective bad faith is not required
17 under Rule 11; the inquiry is objective. *See G.C. and K.B. Investments, Inc. v. Wilson*, 326 F.3d
18 1096, 1109 (9th Cir. 2003). A court may impose sanctions where it finds that counsel's duty under
19 Rule 11 "to conduct a reasonable factual investigation" prior to filing was not satisfied. *See*
20 *Christian v. Mattel, Inc.* 286 F.3d 1118, 1127 (9th Cir. 2002) (where the court found counsel's duty
21 under Rule 11 was "to conduct a reasonable factual investigation" prior to filing); *Montrose*
22 *Chemical Corp. of Calif. v. American Motorists Ins. Co.*, 117 F.3d 11128, 1133 (9th Cir. 1997).
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1 Again, it is the context that matters here. Attorney Bandas (and Rasmussen) are Professional
2 Objectors whose suspect practice area and history should be taken into account. Bandas⁷ has an
3 extensive history of filing objections in class actions. There can be no reasonable question that
4 Professional Objectors Bandas knew the significance of insuring that an accurate address for service
5 of the Objector to a class action settlement they represented needed to be provided and they also
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9 ⁷ Boiled to their essence, Professional Objectors are most often described as and compared to extortionists or other
10 thugs who extract cash through wrongful means. The reality is that what Professional Objectors seek in exchange for
11 simply dropping their objections/appeals is to be paid off. Seldom if ever does the class receive a benefit.
12 Christopher Bandas of the Bandas Law Firm, had at least one appeal already found to be frivolous by another court
13 and also that the Bandas Objector's lack of understanding of the basis of the appeal was "troubling" but refrained
14 making a finding because of the recent case *Azizian v. Federated Department Stores, Inc.* The Objector here is
15 represented by counsel whom are well known for posing objections to class settlements in an attempt to extract a
16 payment from the class members and should be examined by this court under oath to determine among other things
17 how much they have collected so far for objecting to the recently settled state based Wal-Mart wage and hour
18 actions and in exchange for what if any benefit to the respective classes. Professional Objector Bandas is well
19 known to the courts and has been repeatedly chastised and sanctioned for misusing the judicial process for personal
20 gain. Bandas has preyed on most of the Wal-Mart wage and hour class settlements this year and the courts in each
21 of those cases have rejected the objections as baseless. Bandas filed appeals in at least three of those cases, only to
22 abruptly drop each such appeal shortly thereafter, this includes *Sarda v. Wal-Mart*, Case No. 1D09-4881, Florida
23 First District Court of Appeal; *Carter v. Wal-Mart*, 2006 CP1500839, South Carolina Charleston County Common
24 Pleas Court; and *Hale v. Wal-Mart Stores, Inc.*, Case No. 01-218710, Circuit Court of Jackson County. Bandas
25 dropped those appeals without any substantive changes being made to the underlying settlements. The purpose of
26 Bandas' appeals was to extort money from the class by threatening to tie up those settlements for years on appeal
27 and is a clear abuse of process. The appellate courts are not vehicles for unethical lawyers to use to extort money
28 from settlement funds that were created to compensate the plaintiffs and the class counsel whose work created the
fund. Bandas' appeal here is a clear abuse of process.

1 knew that after Plaintiffs formally sought to serve their client and were formally seeking to take her
2 deposition they needed to correct the record or make her available at a time and on a date certain for
3 deposition *before the record was closed*. They are keenly aware of the many balls being juggled
4 during the time period in issue and chose to play a shell game.

5
6 Thus, in addition to the normal burden counsel assumes under Rule 11 when filing a
7 pleading, as Professional Objectors, Bandas knew in this matter that discovery would be sought on
8 their Objector client on an expedited basis, and that Plaintiffs' Counsel would need to effect service
9 on their client.⁸ See Affidavit of Robert Bonsignore in Support of Sanctions at ¶50. The filing of the
10 pleading here with an invalid address for service was an act of either gross attorney negligence in
11 failing to investigate this most basic piece of information from a client, or a deliberate and willful act
12 to prevent valid service and obstruct the orderly administration of justice in this matter – either of
13 which warrants sanctions against Bandas and Rasmussen.

14
15 In fact, there can be no question here that Legal Counsel's misconduct was deliberate and
16 knowing. First, there is no dispute that they had actual knowledge of both notices of their client's
17 deposition (the original notice and the notice rescheduling it to October 19th). It is blatantly
18 unethical and sanctionable misconduct for an attorney to ignore notice and the false address
19 provided.
20

21
22 Second, Bandas and Rasmussen never attempted to correct the record as to their client's
23 invalid address or to contact Plaintiffs' Counsel and firmly reschedule the deposition. Rather, their
24 subsequent conduct successfully served to withhold their client from being deposed and insured that
25 the record would close without allowing Plaintiffs and their Counsel the ability to test and create a
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⁸ This Court should take judicial notice that agreements to produce clients for deposition by Professional Objector
counsel are unheard of and do not occur. Formal service is required.

1 record as to the basis for her objections.⁹ Again – if the address was indeed correct, then Gaona had
 2 actual notice of her deposition was left at the address she provided by process-server Shultz; and
 3 thus, her failure to appear was a deliberate and knowing act to obstruct justice in the face of notice to
 4 both Gaona and her Legal Counsel. Additionally, Plaintiffs have complied with the 21 day Safe
 5 Harbor requirement without any response from Gaona or her Counsel.¹⁰

7 In any case, the end result is the same. Bandas and Rasmussen are responsible and
 8 accountable for the invalid address provided by their client in the Objection and for their own failure
 9 to correct the record and to produce their client for deposition despite multiple notices and an order
 10 expediting discovery. Bandas and Rasmussen should and must be sanctioned for their misconduct.¹¹
 12 In addition to being given the rightful consequence for their conduct, the sanction will serve as an
 13 obviously needed deterrent in the future. There is no doubt that this case is being closely followed
 14 by Professional Objectors' counsel who focus on class action practice and legal commentators and
 15 academics across the country.

18 _____
 19 ⁹ It is well accepted among experienced class counsel that Professional Objectors seek to avoid the deposition of their
 20 clients. This is because in most cases the actual objectors are uninformed or misinformed. *See e.g. Docket no. 472,*
 21 *Deposition of Deborah Maddox.* Except in rare circumstances, the client objectors detract rather than contribute to the
 22 ultimate goal of the Professional Objector- the creation of a colorable basis for appeal in the record.

23 ¹⁰ *See Fed. R. Civ. P. 11(c)(2),* requiring the movant to provide the offending party with 21 days notice of intent to file
 24 for sanctions in order to offer the opportunity to withdraw or otherwise correct the sanctionable conduct. As to the
 25 instant request, Plaintiffs served Counsel Bandas and Rasmussen with this written Notice of Intent on November 16,
 26 2009. A refined follow-up Notice is sent in an abundance of caution, enclosing a copy of the intended Motion for
 27 Sanction and Memorandum in Support.

28 ¹¹ As this Court is well aware, it may also impose sanctions under Rule 11 for filings which are frivolous, legally
 unreasonable or brought for an improper purpose. *See Townsend v. Holman Consulting Corp., 929 F. 2d 1358, 1362*
(9th Cir. 1990).

C. The Requested Monetary Sanctions are Reasonable and Appropriate to Address the Misconduct by Objector Gaona and Professional Objectors Bandas and Rasmussen, to Deter Such Future Misconduct or Comparable Misconduct, and to Compensate Plaintiffs and Their Counsel for Actual Harm Suffered.

It is critical that this Court impose sanctions against Jessica Gaona and Professional Objector Counsels Bandas and Rasmussen. Absent the imposition of sanctions in this case, the misconduct of Gaona and her counsel here will serve as a road map for other Professional Objectors seeking to avoid deposition and other discovery. This loophole should rightly be closed. The road to final closure that parties to class actions face is already too long and difficult and, blocked by artificial barriers imposed by modern day bandits at a remarkable, yet still undocumented rate.

Plaintiffs and their Counsel emphasize that the fact that Gaona is represented by Professional Objectors is highly probative here not to establish bad faith in the filing of the Objection,¹² but to reasonably attribute to her Counsel, in the proper context, the appropriate level of specialized sophistication, experience and knowledge. Professional Objectors have extensive experience in objecting to class action lawsuits which make them keenly aware of the short time frame within which Class Counsel must conduct and complete discovery of objectors. Thus, they are acutely aware of the contextual significance of a good address and class counsel's making good service of process. They also know that taking the deposition of an Objector is considered a necessity by Class

¹² A determination as to whether an appeal is frivolous is reserved to the Appeals Court, not the district court. *Vaughn v. American Honda Motor Co., Inc.*, 507 F.3d 295, 299 (5th Cir. 2007); *Cooter & Gell v. Hartmax Corp.*, 496 U.S. 384, 407 (1990); *In re American President Lines, Inc.*, 779 F.2d 714, 717 (D.C. Cir 1985); *Azizian v. Federated Dept. Stores*, 499 F.3d 950, 960 (9th Cir. 2007); *In re Vasseli*, 5 F.3d 351, 353 (9th Cir 1993) (citing *In re American President Lines, Inc.* 779 F.2d 714, 717 (D.C. Cir. 1985).

Counsel; and the Professional Objectors here certainly knew that that was the case in the instant litigation.¹³

For these reasons, this Court should explicitly find that Professional Objector Bandas knowingly and willfully obstructed justice in this case. This misconduct injected unnecessary chaos, complexity and confusion into the Litigation, taking Court and attorney time away from other time sensitive and critically important mandatory activities during the pre-final approval “overwhelmingly demanding period.” Professional Objectors must not be allowed to disrupt litigation in this manner, and the failure to impose sanctions will certainly encourage repeats of this conduct as Professional Objectors look for any colorable way to inject delay and confusion. This Court should impose sanctions upon the Objector and her Professional Objector Counsel sufficient to discourage comparable misconduct by others similarly situated.¹⁴

Specifically, the actual costs suffered by Plaintiffs and their counsel as a result of the incorrect address and failure to appear at the deposition are as follows:

- \$12,000.00 for a total of 24 hours spent attempting to effect service and obtain a valid address for Objector Gaona;¹⁵

¹³ It did in fact happen in this case that Plaintiffs’ counsel Robert Bonsignore and Gaona’s counsel personally discussed Gaona’s deposition, and Attorney Bonsignore made clear that her deposition was necessary and would be sought by Plaintiffs.

¹⁴ This Court is extremely well respected by the Bar. Among other things it is perceived as a “no-nonsense” Court that does not tolerate sketchy, unethical misconduct or unfair litigation tactics.

¹⁵ This is broken down as follows: The cost of service was \$135.75. In effecting service, preparing for deposition and attempting to locate Gaona’s valid address for service, Attorney Bonsignore spent 18.0 hours valued at \$9,900.00; Attorney Deryl Edwards spent 6.0 hours valued at \$2,100.00 for a total of 24.0 hours wasted attorney hours charged at \$12,000.00. See Affidavit of Robert J. Bonsignore in Support of Sanctions as to Gaona and her Counsel ¶41. Lawyer’s Staff time and this Court’s and its staff’s which are not included here, represent additional needlessly wasted time and resources.

- \$135.75 for the cost of the special process server¹⁶ [related travel costs including airfare, hotel, and meals for counsel are not requested at this time]; and
- \$11,475.00 for 26 hours of counsel's time to research, draft, and file this Motion for Sanctions and accompanying documentation.¹⁷

Thus, the total amount of actual costs requested is \$23,610.75. Additional sanctions pursuant to Rule 11 and necessitated by the willful and unethical misconduct of Professional Objectors Bandas and Rasmussen should also be imposed in this Court's discretion and is requested below.

CONCLUSION

Wherefore, for the reasons set forth herein, Plaintiffs respectfully ask the Court to impose the requested economic and non-economic sanctions against the Objector and her Counsel pursuant to Rule 11 and this Court's inherent authority to impose sanctions.

To address the misconduct and prevent future abuses, the specific relief requested is as follows:

(1) monetary sanctions against Gaona in the amount of \$23,610.75 or an amount deemed just and reasonable by this Court;

¹⁶ See Attachment D, Process Server Invoice.

¹⁷ In drafting this Motion, Attorney Bonsignore spent 8.0 hours valued at \$4,400.00; Nicole Vamosi spent 9.0 hours valued at \$3,600.00; Attorney Richard Kirchner spent 1.5 hours valued at \$400.00; Robin Brewer spent 2.5 hours valued at \$1,125.00 and Deryl Edwards spent 5.0 hours valued at \$1,750.00. The total hours spent researching, writing and editing was 26.0 with an assessed value of \$11,475.00. See Affidavit of Robert J. Bonsignore in Support of Sanctions as to Gaona and her Counsel at ¶42. Again, the value of the attorney's staff time and this Court's and its staff's, which are not included here, represent additional needlessly wasted time and resources.

1 (2) a finding that Gaona knowingly provided an invalid address in her objection;

2 (3) a finding that Gaona willfully failed to appear at deposition without having obtained a
3 protective order, and resulting monetary sanctions;

4 (4) a finding that Gaona willfully failed to correct the record as to her address;

5 (5) a finding that Gaona willfully failed to make herself available for deposition after having
6 failed to attend a deposition at which her attendance was compelled by Order of Court without
7 having obtained a protective order;

8 (6) a finding that because of Gaona's willful and knowing conduct that all inferences as to
9 what her testimony would have been be deemed against her interest;

10 (7) a finding that the failure to accomplish effective formal service on objector Gaona is
11 attributable to the willful and knowing actions and inactions of Professional Objector Counsels
12 Bandas and Rasmussen;

13 (8) a finding that the fact that Objector Gaona was never deposed prior to the close of the
14 record is attributable to the willful and knowing actions and inactions of Professional Objector
15 Counsels Bandas and Rasmussen;

16 (9) a finding that Professional Objector Counsels Bandas and Rasmussen knowingly and
17 willfully obstructed the appearance of Objector Jessica Lynn Gaona at her duly noticed deposition;

18 (10) a finding that the provision of the invalid address for service was not the product of the
19 required reasonable and competent inquiry by Counsels Bandas and Rasmussen;

20 (11) a finding that because no effort was taken by Counsels Bandas and Rasmussen to either
21 correct the record or produce for deposition before the Final Approval Hearing and the closing of the
22 related record resulted in irreparable harm to the Class.

1 (12) a finding that Professional Objector Counsels Bandas and Rasmussen knowingly and
2 willfully did not act as required to correct the record;

3 (13) a finding that Professional Objector Counsels Bandas and Rasmussen knowingly and
4 willfully did not act as required to produce Gaona for deposition on a certain date and at a certain
5 time after she failed to obey the order compelling her attendance prior to the closing of the record;

6 (14) a finding that Professional Objector Counsels Bandas and Rasmussen acted to achieve
7 the purpose of avoiding the introduction of their Client's testimony into the record;

8 (15) a finding that Professional Objector Counsels Bandas and Rasmussen acted in
9 furtherance of carrying out the known unfair obstructionist strategies utilized by Professional
10 Objectors, resulting in monetary and non monetary sanctions;

11 (16) an order that Gaona's Counsel provide this Court with a list of all actions – by Court
12 Name, Address, Phone, Fax, Case Name and Docket Number – in which they have filed an objection
13 to a class action settlement and whether, in each action listed, Counsel was requested to produce the
14 client for deposition; and whether the client was in fact deposed;

15 (17) a finding that as Professional Objector Counsels who have developed specialized
16 experience and knowledge, Bandas and Rasmussen knew the significance of the address provided
17 and that formal discovery would be sought during a small window of opportunity by Plaintiffs'
18 counsels on an expedited basis and that their actions and inactions were undertaken to gain an unfair
19 advantage at the Appellate level of review by insuring the record would not contain the deposition of
20 Objector Gaona;

21 (18) monetary sanctions against Attorneys Bandas and Rasmussen in the amount of
22 \$23,610.75 or an amount deemed just and reasonable by this Court.
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(19) other findings as this Court deems just, reasonable and/or necessary under the circumstances

Plaintiffs request that the sanctions requested in paragraphs (1) through (15) and (19) above be decided forthwith, and that Professional Objector Counsel Bandas and Rasmussen (and any relevant associate counsels) be ordered to produce the information requested in paragraph (16) within two (2) weeks. Plaintiffs further request that the relief requested in paragraphs (17) and (18), including monetary sanctions against Bandas and Rasmussen, be reserved until the information requested in paragraph (17) above is provided for validation and cross checking with an additional 4 weeks following its receipt for briefing and a one week period allowing Bandas and Rasmussen to respond, and an additional one week period allotted to Plaintiffs counsel for a Reply.

Date: February 11, 2010

Respectfully Submitted,

s/

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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2010, a copy of the foregoing *Plaintiffs'*
Memorandum in Support of Motion for Imposition of Sanctions Against Objector Jessica
Lynn Gaona and Her Counsels Christopher Bandas and Lisa Rasmussen was filed
electronically [and served by mail on anyone unable to accept electronic filing]. Notice of this
filing will be sent by e-mail to all parties by operation of the Court's electronic filing system [or
by mail to anyone unable to accept electronic filing]. Parties may access this filing through the
Court's system.

/s/ Robert J. Bonsignore
Robert J. Bonsignore